

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

DIVORCE CAUSE NO. 32 OF 2000

M E A.....PETITIONER

=VERSUS=

G A A RESPONDENT

JUDGEMENT

The Petitioner herein and the Respondent solemnized a monogamous marriage at Diani, in Kwale on 17th May, 1997. The Respondent was a 24 year-old Kenyan bachelor working as a Security Officer at the Diani Beach Hotel while the Petitioner was a 54 year old Spinster from Switzerland whose occupation was "house wife". Thereafter they cohabited in Diani Ukunda but have had no children of the marriage. Before three years were over however the marriage ran into problems and virtually came to an end.

The Petitioner discovered that the Respondent had another woman whom he cohabited with as a wife and they already had two children before that marriage and one other child during the subsistence of their marriage. The Respondent and the other woman were married under Luo Customary Law before the monogamous marriage was solemnized. The Petitioner was also physically assaulted and abused by the Respondent. She was also neglected and suffered mental and physical anguish. She has not condoned the adultery, cruelty and desertion.

So she came to court on 12th September, 2000 and filed this petition seeking dissolution of the said marriage. Despite being served and acknowledging service of that petition on 18th September, 2000, the Respondent filed no answer to the petition and therefore the Registrar issued his Certificate under the Matrimonial Causes Act on 14th March, 2001.

I heard the Petitioner who testified on oath reiterating the averments in the petition and confirmed that the Respondent indeed deserted her in July 1998 and went to live with his first wife at Kisauni, Mombasa. On that evidence alone there is a case for a finding that the monogamous marriage solemnized on 17th May, 1997 without the disclosure of a potentially polygamous marriage under custom, was a nullity ab initio.

Even if such marriage did not exist, and in the absence of controverting evidence, I have no reason to disbelieve the Petitioner that the Respondent was living in adulterous relationship with the new woman, was cruel to the petitioner and did in fact desert her more than two years before she filed her petition. The marriage is irretrievably broken down. The prayers made in the petition must issue.

Accordingly I order that a decree Nisi shall issue to dissolve the marriage solemnized on 17th May, 1997 between **GAA and MEA** under marriage Certificate No. 69745. The Respondent shall bear the costs of the petition.

Dated this 11th day of July 2001.

PHILIP N. WAKI

JUDGE